No. 93-908

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1993

CHARLES J. REICH,
Petitioner,

vs.

MARCUS E. COLLINS AND THE GEORGIA DEPARTMENT OF REVENUE,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Georgia

BRIEF *AMICI CURIAE* FOR DESIGNATED FEDERAL RETIREES IN KANSAS, NEW YORK AND OKLAHOMA IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether the availability of declaratory, injunctive or administrative relief from illegal state income taxation eliminates Georgia's obligation under the Fourteenth Amendment to provide meaningful backward-looking relief to federal retirees who paid the tax to avoid potential financial sanctions and summary remedies.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES:

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BRIEF *AMICI CURIAE* FOR DESIGNATED FEDERAL RETIREES IN KANSAS, NEW YORK AND OKLAHOMA IN SUPPORT OF PETITIONER

Designated federal retirees from the States of Kansas, New York and Oklahoma file this brief *amicus curiae* in support of the petitioner and request this Court to grant the petition for a writ of certiorari to the Supreme Court of the State of Georgia.

INTEREST OF THE *AMICI CURIAE*

Amici are the petitioners in *Barker v. Kansas*, 112 S.Ct. 1619 (1992), *on remand*, Nos. 89-CV-666 and 89-CV-1100 (Dist. Ct. Shawnee Cty., Kan., Div. IV); the appellants in *Duffy v.*

Wetzler, 555 N.Y.S.2d 543 (N.Y. Sup. Ct. 1990), *aff'd as modified*, 174 A.D.2d 253, 579 N.Y.S.2d 684 (N.Y. App. Div.), *appeal dism'd*, 79 N.Y.2d 976, 583 N.Y.S.2d 190, 592 N.E.2d 798 (N.Y. 1992), *cert. granted, vacated, and dismissed*, 113 S.Ct. 3027 (1993), *on remand*, Nos. 90-07800 and 91-02056 (N.Y. Sup. Ct.); and the appellants in *Strelecki v. Oklahoma Tax Comm'n*, ___ P.2d ___ (Okl., Sept. 28, 1993) (No. 77,615), *pet. for rehearing filed* (Oct. 18, 1993).[1]

Amici are retired military and civilian employees of the United States involved in ongoing state court litigation which presents the federal question raised here. *Barker* and *Duffy* are both on remand from this Court. Kansas, New York and Oklahoma contend that the availability of declaratory, injunctive or administrative relief from state income taxation which violates 4 U.S.C. § 111 eliminates any obligation under the Fourteenth Amendment to provide meaningful backward-looking relief to federal retirees who paid the tax to avoid financial sanctions and summary remedies. The ultimate disposition of this issue will have a decided impact on the constitutional rights of *amici* and retired federal employees in other States which have refused to enforce the clear mandates of *Harper v. Virginia Dept. of Taxation*, 113 S.Ct. 2510 (1993), *McKesson Corp. v. Florida Alcohol & Tobacco Div.*, 496 U.S. 18 (1990), and their predecessors. Therefore, *amici* have a salient and compelling interest in proper resolution of the principal question presented in this case.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. In pertinent part, Section 1 of the Fourteenth Amendment provides that "nor shall any State deprive any person of life, liberty, or property, without due process of law. . . ."

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[1] Set forth in Appendix A is a complete list of all *amici*. The written consents of the parties to the filing of this brief *amici curiae* have been filed with the Clerk of the Court.

2. In pertinent part, 4 U.S.C. § 111 provides:

> The United States consents to the taxation of pay or compensation for personal service as an officer or employee of the United States . . . by a duly constituted taxing authority having jurisdiction, if the taxation does not discriminate against the officer or employee because of the source of pay or compensation.

REASONS FOR ALLOWING THE WRIT

This case presents an important and recurring federal question with far-reaching impact: whether the availability of declaratory, injunctive or administrative relief from state income taxation which violates 4 U.S.C. § 111 eliminates any obligation under the Fourteenth Amendment to provide meaningful backward-looking relief to federal retirees who paid the tax to avoid potential financial sanctions and summary remedies. State courts of last resort have delivered conflicting opinions on this issue and further divergence is inevitable. Therefore, review on writ of certiorari is necessary to resolve existing conflict among the states and to ensure national uniformity in federal constitutional law. Such review is also necessary to enforce controlling principles of due process ignored by the Georgia Supreme Court.

I. THE FEDERAL QUESTION PRESENTED SHOULD BE RESOLVED BY THIS COURT TO PROVIDE AUTHORITATIVE GUIDANCE TO ALL STATES OF THE UNION

A. The Opinion Below Directly Conflicts With Decisions of Other State Courts of Last Resort

The Georgia Supreme Court held that federal retirees are not entitled to any backward-looking relief from state income taxes exacted in violation of 4 U.S.C. § 111 because proceedings for declaratory, injunctive and administrative relief afforded them

meaningful "predeprivation" opportunities to challenge the validity of the tax before payment despite potential financial sanctions and summary remedies. *Compare* Pet.App. A at 4A-6A (meaningful predeprivation remedies before payment), *with id.* at 7A-14A (Carley, J., dissenting) (potential predeprivation remedies are not meaningful since retirees were subject to financial sanctions and summary remedies for nonpayment during the pendency of any challenge to the validity of the tax). This unpersuasive conclusion, however, directly conflicts with applicable decisions of the Supreme Courts of Iowa and North Dakota. *See Hagge v. Iowa Dept. of Revenue and Finance*, 504 N.W.2d 448, 450-451 (Iowa 1993); *Service Oil, Inc. v. State*, 479 N.W.2d 815, 821-824 (N.D. 1992).[2]

In *Hagge*, a unanimous Iowa Supreme Court upheld the district court's conclusion that a federal retiree "had no 'real' predeprivation remedy" under *McKesson Corp. v. Florida Alcohol & Tobacco Div.*, 496 U.S. 18 (1990), since "'failure to pay the tax would have subjected him to even further difficulties.'" 504 N.W.2d at 450. The court seriously questioned whether an action for injunctive relief "would qualify as 'meaningful' under a *McKesson* analysis" and concluded that "tax payment in Iowa continues to be less 'voluntary' than under 'duress'" because of adjustable statutory penalties [e.g., 7% for failing to pay 90% of the tax due when filing the return], statutory interest on all unpaid taxes at a rate tied to prime, and tax liens on property for nonpayment. *Id.* at 450-451.

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[2] In *Strelecki v. Oklahoma Tax Comm'n, supra*, the Oklahoma Supreme Court likewise rejected the State's argument that the failure of federal retirees to avail themselves of declaratory, injunctive and administrative relief provided an adequate basis to deny them any postdeprivation remedy under the Fourteenth Amendment. ___ P.2d at ___, slip op. at 17-19. Disposition of this issue in *Strelecki*, however, was not expressly based upon the existence of potential financial sanctions or summary remedies for nonpayment. Nevertheless, the result in *Strelecki* directly conflicts with the disposition of this issue in the opinion below.

In *Service Oil*, a unanimous North Dakota Supreme Court held that statutory procedures for declaratory and injunctive relief did not provide "taxpayers with a meaningful opportunity to withhold payment and obtain a predeprivation determination of the validity" of a discriminatory tax which violated the Commerce Clause since nonpayment would have subjected them to potential financial sanctions and summary remedies. 479 N.W.2d at 822-823. Such financial sanctions included a penalty equal to 5% of the unpaid tax and interest at the rate of 1% per month on the unpaid balance. *Id.* at 822. Following an extensive analysis of *McKesson*, the North Dakota Supreme Court held as a matter of federal constitutional law that the plaintiff's payment of discriminatory taxes on motor vehicle fuels was not voluntary and that the taxpayer was entitled to meaningful retroactive relief. *Service Oil*, 479 N.W.2d at 821-824.

Despite *Hagge* and *Service Oil*, which the opinion below fails to address or distinguish, the Georgia Supreme Court flatly refused to grant the taxpayers any form of "postdeprivation" relief although federal retirees in Georgia who withheld payment while challenging the validity of the tax would have risked the imposition of severe sanctions and summary remedies. In this regard, any federal retiree who failed to pay the Georgia income tax when due would have been subject to:

> (i) misdemeanor criminal prosecution and the possibility of conviction [*see* Ga. Code Ann. § 48-7-2(a)(1) and (b) (1982)];
>
> (ii) the assessment of interest on the unpaid balance at the rate of 12% per annum [*see* Ga. Code Ann. § 48-7-81(a) (1982) and Ga. Code Ann. § 48-2-40 (1991)];
>
> (iii) the assessment of penalties at the rate of one-half of one percent (1/2 of 1%) per month or 6% per annum up to an aggregate of 25% of the amount of the unpaid tax [*see* Ga. Code Ann. §

48-7-86(a)(1) and (2) (1982 & Supp. 1993)];

(iv) the garnishment of his or her wages for unpaid taxes, interest and penalties [*see* Ga. Code Ann. § 48-2-55(b)(2) (1991 & Supp. 1993)]; and

(v) the levy upon his or her "property and rights to property" for unpaid taxes, interest, penalties and the costs of the levy, as well as the judicial sale of real and personal property [*see* Ga. Code Ann. § 48-2-55(c) and (d) (1991 & Supp. 1993)].

Since the risk of comparable, albeit potentially less severe, financial sanctions and summary remedies in Iowa and North Dakota requires meaningful postdeprivation relief under the Fourteenth Amendment, the decision below has created an irreconciliable conflict between State courts of last resort which should be resolved on writ of certiorari.

B. Review by This Court Is Necessary to Resolve Existing Conflict Among the States and to Avoid Additional Conflicting Decisions

In view of constraints upon the jurisdiction of federal courts imposed by Eleventh Amendment jurisprudence, the Tax Injunction Act [28 U.S.C. § 1341] and considerations of comity, constitutional challenges to state taxes must ordinarily be pursued through state courts. *See, e.g., Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 122 (1984); *Fair Assessment in Real Estate Ass'n v. McNary*, 454 U.S. 100, 116 (1981).[3] Consequently, the writ of certiorari from this Court is the only

[3] Because of these limitations, federal retirees in Georgia have consistently been deprived of access to the federal courts to resolve their claims of unlawful income taxation and entitlement to meaningful relief. *See Waldron v. Collins*, 788 F.2d 736, 737-739 (11th Cir.), *cert. denied*, 479 U.S. 884 (1986); *Wetzel v. Collins*, No. 1:89-CV-758-ODE (N.D.Ga.) (Order, Sept. 26, 1990).

generally available means to resolve decisional conflicts between the State courts of last resort in state tax cases where precious federal constitutional rights are at stake. Review on writ of certiorari is, therefore, essential to resolve the existing conflict between the Supreme Courts of Iowa and North Dakota and the Supreme Court of Georgia, and to ensure national uniformity in the due process rights of state taxpayers under the Fourteenth Amendment. *See McKesson*, 496 U.S. at 28-29 (securing "state-court compliance with, and national uniformity of, federal law" are proper objectives of review.). Otherwise, the minimum requirements of federal due process will vary from state to state and the degree of Fourteenth Amendment protection afforded state taxpayers will depend solely upon their state of residence.

Authoritative guidance from this Court is also necessary to avoid further conflict among state courts regarding the rights of taxpayers, including federal military and civilian retirees, to fair and meaningful "postdeprivation" relief under the Fourteenth Amendment when challenged taxes have been paid to avoid potential financial sanctions and summary remedies. While this important issue may arise in any action which challenges the validity of a state tax on federal constitutional or statutory grounds, it is currently pending in state tax litigation which has arisen in the wake of *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803 (1989). In addition to the *Davis*-related cases in Kansas, New York and Oklahoma, questions involving the entitlement of federal retirees to fair and meaningful postdeprivation relief under the Fourteenth Amendment have also been raised in *Mississippi State Tax Comm'n v. Todd, appeal pending*, Nos. 91-CC-422, 91-CC-474, 91-CC-475 and 91-CC-476 (Miss.); *Gossum v. Commonwealth of Kentucky Revenue Cabinet, appeal pending*, No. 92-SC-1041-T (Ky.); *Wisconsin Dept. of Revenue v. Hogan, petition for review pending*, No. 93-CV-2549 (Cir. Ct. Dane Cty., Wis.); and *Harper v. Virginia Dept. of Taxation*, 113 S.Ct. 2510 (1993), *on remand*, No. CL891080 (Cir. Ct. City of Alexandria, Va.) (argued Oct. 21, 1993). Therefore, no fewer than seven (7) pending cases may be affected by the decision of the Georgia Supreme Court at issue here.

If the opinion below is not reviewed, other state courts might be inclined to hold that the availability of declaratory, injunctive or administrative relief from unlawful state taxation eliminates any obligation to provide fair or meaningful "postdeprivation" relief even when a State simultaneously utilizes the threat of financial sanctions and summary remedies to encourage taxpayers to make timely payments before resolution of any dispute over the validity of taxes. *But see Harper*, 113 S.Ct. at 2519-20 and n. 10; *McKesson*, 496 U.S. at 31, 37-39, and 51-52. Since "courts sometimes perhaps have been a little too slow to recognize the implied duress under which payment is made," *Atchison, Topeka & Santa Fe Railway Co. v. O'Connor*, 223 U.S. 280, 286 (1912) (Holmes, J., unanimous opinion), the continued existence of conflict on this issue will encourage parochial decisionmaking and inevitably cause further divergence of opinion among state courts.

II. THE DECISION BELOW CONFLICTS WITH THE REQUIREMENTS OF DUE PROCESS RECENTLY REITERATED IN *HARPER V. VIRGINIA DEPT. OF TAXATION*, 113 S.CT. 2510 (1993) AND *MCKESSON CORP. V. FLORIDA ALCOHOL & TOBACCO DIV.*, 496 U.S. 18 (1990)

In *Harper*, this Court emphasized that when a State does not offer a meaningful opportunity for taxpayers to withhold contested tax payments while challenging their validity in a predeprivation hearing, "'the Due Process Clause of the Fourteenth Amendment obligates the State to provide meaningful backward-looking relief to rectify any unconstitutional deprivation.'" 113 S.Ct. at 2519 (quoting *McKesson*, 496 U.S. at 31). Writing for the Harper majority, Justice Thomas reiterated that "[a] State incurs this obligation when it 'places a taxpayer under duress promptly to pay a tax when due and relegates him to a postpayment refund action in which he can challenge the tax's legality.'" 113 S.Ct. at 2519 n. 10 (quoting *McKesson*, 496 U.S. at 31).

While the opinion below does not address the circumstances under which the Fourteenth Amendment requires a State to provide taxpayers with a clear, certain and meaningful postdeprivation remedy, the *Harper* decision unequivocally explains:

> A State that establishes various sanctions and summary remedies designed to prompt taxpayers to tender payments before their objections are entertained or resolved does not provide taxpayers a meaningful opportunity to withhold payment and to obtain a predeprivation determination of the tax assessment's validity. Such limitations impose constitutionally significant duress because a tax payment rendered under these circumstances must be treated as an effort to avoid financial sanctions or a seizure of real or personal property.

113 S.Ct. at 2519 n. 10 (internal citations and punctuation omitted). *See also Carpenter v. Shaw*, 280 U.S. 363, 369 (1930); *Ward v. Love County Board of Comm'rs*, 253 U.S. 17, 23-24 (1920); *O'Connor*, 223 U.S. at 286-287. Indeed, it has been long settled that "when a tax is paid in order to avoid financial sanctions or a seizure of real or personal property, the tax is paid under 'duress' in the sense that the State has not provided a fair and meaningful predeprivation procedure." *McKesson*, 496 U.S. at 38 n. 21. Under such circumstances, "[t]he State accordingly may not confine a taxpayer under duress to prospective relief." *Harper*, 113 S.Ct. at 2519 n. 10.

In *McKesson*, the taxpayer brought suit in Florida state court challenging a liquor excise tax which discriminated against interstate commerce and, therefore, violated the Commerce Clause. 496 U.S. at 22-23. The taxpayer sought declaratory and injunctive relief against continued enforcement of the discriminatory tax scheme and "a refund in the amount of the excess taxes it had paid as a result of its disfavored treatment." *Id.* at 24-25. While the taxpayer in *McKesson* secured both declaratory and injunctive

relief from unlawful state excise taxation, the Florida courts refused to award any postdeprivation relief. *Id.* at 25-26 and 31. On writ of certiorari, this Court unanimously concluded that the Florida Supreme Court erred in confining the taxpayer to prospective relief and reversed, reasoning that "if a State penalizes taxpayers for failure to remit their taxes in timely fashion * * * * the Due Process Clause requires the State to afford taxpayers a meaningful opportunity to secure postpayment relief for taxes already paid pursuant to a tax scheme ultimately found unconstitutional." *McKesson*, 496 U.S. at 22; *see also id.* at 31, 38-39 and 51-52.

While the State of Florida authorized taxpayers to seek declaratory and injunctive relief from unlawful taxation, this Court unanimously held in *McKesson* that the availability of such prospective remedies did not eliminate Florida's obligation to provide clear, certain and meaningful postdeprivation relief since the challenged excise taxes had been paid to avoid the potential imposition of financial sanctions [i.e., interest at the rate of 12% per annum and a penalty equal to 50% of the unpaid tax], and the potential seizure of property to satisfy any unpaid liability for taxes, interest and penalties. 496 U.S. at 37-39 and n. 20; *see also O'Connor*, 223 U.S. at 286 (taxpayers are not required "to take the risk" of adverse financial consequences or sanctions for nonpayment). Because these potential financial sanctions and summary remedies are "designed so that liquor distributors tend tax payments before their objections are entertained and resolved," *McKesson*, 496 U.S. at 38 (emphasis in original), the ability to secure declaratory or injunctive relief does not constitute a fair or meaningful predeprivation procedure.

As Justice Brennan explained for a unanimous court:

> Florida does not purport to provide taxpayers like petitioner with a meaningful opportunity to withhold payment and to obtain a predeprivation determination of the tax assessment's validity; rather, Florida requires taxpayers to raise their objections to the tax in a postdeprivation refund action. To satisfy the requirements of the Due Process Clause, therefore, in this refund action the State must provide taxpayers with, not only a fair opportunity to challenge the accuracy and legal validity of their tax obligation, but also a 'clear and certain remedy,' *O'Connor*, 223 U.S., at 285, for any erroneous or unlawful tax collection to ensure that the opportunity to contest the tax is a meaningful one.

McKesson, 496 U.S. at 38-39 (footnotes omitted).

Despite the unequivocal teachings of *Harper* and *McKesson*, the opinion below significantly ignored the fact that federal retirees in Georgia who failed to pay the challenged income tax when due would have been subject to substantial disadvantages under state law. These law abiding citizens would have risked criminal prosecution (as well as conviction and incarceration) and the assessment of interest at the rate of 12% per annum and penalties up to 25% of the unpaid amount of the tax. *See* Ga. Code Ann. § 48-7-2 (criminal prosecution); Ga. Code Ann. § 48-7-81(a) and § 48-2-40 (interest); Ga. Code Ann. § 48-7-86(a) (penalties). Such retired taxpayers would have also risked the garnishment of their wages, levies upon their property, and judicial sales of their property, for the amount of unpaid taxes, interest and penalties. *See* Ga. Code Ann. § 48-2-55(b)(2) (garnishment); Ga. Stat. Ann. § 48-2-55(c) and (d) (levies, execution and judicial sales). Surely, the Due Process Clause does not require federal retirees to assume the risk of such potentially serious consequences for nonpayment before final resolution of their constitutional challenge to the validity of the Georgia income tax on federal retirement benefits. *See, e.g., McKesson*, 496 U.S. at 38 n. 21; *Hagge*, 504 N.W.2d

at 450-451; *Service Oil*, 479 N.W.2d at 821-824.[4]

For retired taxpayers living on fixed incomes in Georgia, there can be no doubt that such potential consequences created implied duress and that their tax payments "must be treated as an effort 'to avoid financial sanctions or a seizure of real or personal property.'" *Harper*, 113 S.Ct. at 2519 n. 10 (quoting *McKesson*, 496 U.S. at 38 n. 21). The Georgia Supreme Court's complete failure to recognize or attach any significance to these serious potential consequences for nonpayment is, therefore, wholly inconsistent with the requirements of due process reiterated by this Court in *Harper* and *McKesson*. Under the circumstances, Georgia has shunned its solemn constitutional obligation to afford federal retirees any fair, meaningful, clear or certain postpayment remedy to redress unlawful state taxation. Accordingly, review by this Court on writ of certiorari is necessary to enforce controlling principles of federal due process which have thus far been ignored

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[4] Writing for a unanimous court in *O'Connor*, Justice Holmes recognized that a taxpayer "should be at liberty to avoid those disadvantages by paying promptly and bringing suit" and "is entitled to assert his supposed right on reasonably equal terms." 223 U.S. at 286. Where a State, such as Georgia, obtains a lopsided advantage against taxpayers by employing significant financial sanctions and summary remedies to secure prompt payment of disputed taxes before any challenge is made or resolved, principles of justice and fair play embodied in the Due Process Clause of the Fourteenth Amendment entitle taxpayers to level the playing field, and avoid duress, by paying such taxes prior to and during the pendency of any challenge to their validity. *Id.* at 286-287.

In *McKesson*, the taxpayer sought postdeprivation relief from unlawful excise taxes paid during a 32-month period before and after the commencement of suit in Florida state court. 497 U.S. at 23-25 and n.4. Since potential financial sanctions and summary remedies negated any fair or meaningful predeprivation procedure in *McKesson*, the taxpayer there was entitled "to assert [it]s right on reasonably equal terms," *O'Connor*, 223 U.S. at 286, by paying the tax and seeking meaningful postdeprivation relief. *See McKesson*, 496 U.S. at 22, 32-33, 37-39 and 51-52. These same principles of justice and fair play are equally applicable here.

by the Supreme Court of Georgia.[5]

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari to the Supreme Court of the State of Georgia should be granted and the decision below reversed.

Respectfully submitted,

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[5] The Georgia Supreme Court's suggestion that federal retirees could have fully litigated "the validity of taxes alleged owing prior to the time when the taxes fall due" (Pet. App. A at 4A) does not withstand casual scrutiny. Georgia income taxes are generally due on or before April 15 following the close of each calendar year. *See* Ga. Code Ann. § 48-7-80 (1982 & Supp. 1993). In the interim, however, taxpayers are also required to make estimated income tax payments in four equal quarterly installments, Ga. Code Ann. § 48-7-116(a) (1982 & Supp. 1993), and the failure to make such payments in a timely manner subjects the taxpayer to the assessment of 9% interest per annum on the amount of any underpayments, Ga. Code Ann. § 48-7-120(a) (1982). Given the protracted period of years during which *Davis*-related litigation has been pending in Georgia and elsewhere, as a matter of historical fact, federal retirees have not and could not have fully litigated or resolved the validity of Georgia's income tax on their federal retirement benefits before the tax became due. Moreover, any federal retiree who withheld payment of such challenged taxes since 1989 would have been subject to a staggering assessment of interest and penalties, as well as the potential garnishment of wages, levies upon property and judicial sales of their property, for unpaid taxes, interest, penalties and costs of execution.

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APPENDIX A

The following is a complete list of all individuals appearing as *amicus curiae* in connection with this brief:

KANSAS *AMICI*

The petitioners in *Barker v. Kansas*, 112 S.Ct. 1619 (1992), *on remand*, Nos. 89-CV-666 and 89-CV-1100 (Dist. Ct. Shawnee Cty., Kan., Div. IV), include:

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RENATA O. KELLOGG;	CLARENCE WOLF; AND
WILLIAM J. LOBER, JR.;	FLORA B. WOLF,

for themselves individually and as designated class representatives on behalf of a certified class of approximately 14,000 federal military retirees (and joint taxpayer spouses where applicable) who were subject to Kansas income taxation of federal military retired pay during one or more years from 1984 through 1991.

NEW YORK *AMICI*

The appellants in *Duffy v. Wetzler*, 555 N.Y.S.2d 543 (N.Y. Sup. Ct. 1990), *aff'd as modified*, 174 A.D.2d 253, 579 N.Y.S.2d (N.Y. App. Div.), *appeal dism'd*, 79 N.Y.2d 976, 583 N.Y.S.2d 190, 592 N.E.2d 798 (N.Y. 1992), *cert. granted, vacated, and remanded*, 113 S.Ct. 3027 (1993), *on remand*, Nos. 90-07800 and 91-02056 (N.Y. Sup. Ct.), include:

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HELEN WAX.

OKLAHOMA *AMICI*

The appellants in *Strelecki v. Oklahoma Tax Comm'n*, ___ P.2d ___ (Okl., Sept. 28, 1993) (No. 77,615), *pet. for rehearing filed* (Oct. 18, 1993), include:

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